

# HOUSE . . . . . No. 3294

---

By Mr. Kaufman of Lexington, petition of Jay R. Kaufman and others for legislation to regulate the establishment of municipal lighting plants. Telecommunications, Utilities and Energy.

---

## The Commonwealth of Massachusetts

---

### PETITION OF:

Jay R. Kaufman	Matthew C. Patrick
Charles A. Murphy	Cory Atkins
Robert K. Coughlin	David Paul Linsky
James B. Leary	Thomas M. Stanley
Susan W. Pope	Richard R. Tisei
Ellen Story	Robert A. Antonioni
Ruth B. Balser	Brian A. Joyce
Louis L. Kafka	Susan C. Fargo
Shirley Gomes	Michael R. Knapik
Michael E. Festa	Richard T. Moore
Mark J. Carron	Robert A. Havern
William C. Galvin	Therese Murray
Robert M. Koczera	Alice K. Wolf
James B. Eldridge	Rachel Kaprielian
Frank I. Smizik	Patricia D. Jehlen
Michael J. Rodrigues	Steven A. Tolman
J. James Marzilli, Jr.	Deborah D. Blumer
Marie J. Parente	Anne M. Paulsen
Jennifer M. Callahan	Timothy J. Toomey, Jr.
Lida E. Harkins	Carl M. Sciortino, Jr.

---

In the Year Two Thousand and Five.

---

AN ACT RELATIVE TO THE ESTABLISHMENT OF MUNICIPAL LIGHTING  
AUTHORITIES.

*Be it enacted by the Senate and House of Representatives in General  
Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Section forty-three of chapter one hundred sixty-  
2     four of the General Laws, as appearing in the 1998 Official Edi-  
3     tion, is hereby amended by striking said section in its entirety and  
4     inserting in place thereof the following section:—

5     Section 43. (a) If a municipality which votes to establish a  
6     municipal lighting plant fails, within one hundred and fifty days  
7     from the passage of the final vote required by section thirty-five  
8     or thirty-six, to agree, as to price or as to the property to be  
9     included in the purchase, with the distribution company, as  
10    defined in section one of chapter one hundred sixty-four of the  
11    General Laws, currently serving such municipality, such munici-  
12    pality may apply to the department for review of the feasibility of  
13    the municipality's acquisition of such property. The municipality's  
14    filing shall include an outline of the property the municipality  
15    wishes to acquire, a projection of purchase price of such property,  
16    a projection of other costs of establishing the municipal lighting  
17    plant, an outline of a financing plan to cover the purchase price,  
18    including a description of municipality's bonding ability, pro  
19    forma income statement and balance sheet for the municipal  
20    lighting plant, the options for governance of the municipal  
21    lighting plant approved or anticipated by the municipality, and a  
22    projection of electric rates to be charged by the municipal lighting  
23    plant.

24    (b) The department may request comments on the filing, hold  
25    hearings or technical conferences, and request data and supporting  
26    materials from the municipality and the distribution company. The  
27    department shall issue a report regarding the feasibility of the  
28    municipality's filing within one hundred and eighty days of the  
29    filing, provided however that the department is not required to  
30    issue more than three such reports in any contiguous twelve-  
31    month period. Any reports that are not issued within one hundred  
32    and eighty days of the filing shall be issued in the order of the fil-  
33    ings. If multiple municipalities file with the stated intent of estab-  
34    lishing a joint or cooperative system of municipal lighting plants,  
35    the department shall process such filing simultaneously, to the  
36    extent possible. The department shall transmit copies of the afore-  
37    mentioned report to the municipal clerk, the Division of Energy  
38    Resources and the Joint Committee on Government Regulations.

39 (c) Upon the issuance of the department's report, or the expira-  
40 tion of the previously-described time period for such report, the  
41 municipality may seek determination as to what property ought in  
42 the public interest to be included in the purchase and what price  
43 should be paid, which shall be equal to the original cost of the  
44 property less accumulated depreciation. Such value shall be esti-  
45 mated without enhancement on account of future earning capacity,  
46 lost sales, good will, physical reconfiguration of the distribution  
47 company's utility plant and system or of exclusive privileges  
48 derived from rights in the public ways. The department, after  
49 notice to the parties, shall give a hearing thereon and make the  
50 determination aforesaid within one hundred and eighty days of the  
51 request for determination. Such property shall include such por-  
52 tion of the property within the limits of such municipality as is  
53 suitable for, and used in connection with, the distribution of elec-  
54 tricity within such limits, including, at the election of the munici-  
55 pality, the entirety of equipment jointly owned with other entities,  
56 in which case said entities shall be directly compensated for, in a  
57 manner similar to the distribution company's compensation for its  
58 own interest in the jointly-owned equipment.

59 (d) The department shall also include a plan for severance of  
60 property allowing both the distribution company and the munic-  
61 ipal lighting plant to serve their customers at the lowest identifi-  
62 able and achievable total cost, through any combination of joint  
63 facility ownership, additional metering, contractual arrangements  
64 for delivery of power, and new construction. If the distribution  
65 company and the municipality agree on a plan for severance of  
66 property, the department shall approve such plan within ninety  
67 days, upon a finding that it is in the public interest. If the distribu-  
68 tion company and the municipality do not agree on such a plan,  
69 the department shall approve within one hundred and eighty days  
70 of a petition for adjudication, the severance plan that results in the  
71 lowest identifiable and achievable total cost to Massachusetts  
72 energy consumers. The department shall also set terms and condi-  
73 tions for the transfer of property from the distribution company to  
74 the municipal lighting plant. If any such property is subject to any  
75 mortgages, liens or other encumbrances, the department in making  
76 its determination shall provide for the deduction or withholding  
77 from the purchase price, pending discharge, of such sum or sums  
78 as it deems proper.

79 (e) Within thirty days after such determination shall have been  
80 made by the department, the distribution company shall tender to  
81 the municipality's city or town clerk a good and sufficient deed of  
82 conveyance for the property required by the department to be pur-  
83 chased, and shall then place said deed in escrow. The municipality  
84 shall have one hundred and eighty days in which to accept or  
85 reject said tender, or to appeal to the department any aspect of the  
86 proposed deed of conveyance. If the municipality accepts, it shall  
87 have a further period of one hundred and eighty days in which to  
88 pay to the distribution company the price determined as hereinbe-  
89 fore provided. Such acceptance or rejection in case of a city shall  
90 be by vote of its city council, or its commissioners if its govern-  
91 ment consists of a commission, and in case of a town shall be by  
92 vote at a town meeting, or by such town officer or body to which  
93 town meeting shall delegate such authority. In the event that the  
94 distribution company fails to comply with the preceding require-  
95 ments, the price to be paid by the municipality will immediately  
96 be reduced by one percent of the price determined by the depart-  
97 ment. For every thirty additional days that pass prior to the distri-  
98 bution company's compliance with the preceding requirements,  
99 the price will be reduced by an additional one percent. Provided,  
100 however, that the department may waive such reduction if it finds  
101 that the delay in compliance was beyond the control of the distrib-  
102 ution company.

103 (f) In connection with the exercise by a municipality of the  
104 option to purchase utility plant pursuant to this section, the munic-  
105 ipality may elect to assume responsibilities for maintenance,  
106 placement and removal of jointly-owned poles or other facilities  
107 shared with other public utilities, or to purchase such facilities at  
108 the original cost of the property less accumulated depreciation.  
109 Except where the municipality makes such election, the munici-  
110 pality shall assume the rights and obligations of the previous  
111 owner with respect to any person other than the distribution com-  
112 pany controlling or using the poles, conduit or other jointly-owned  
113 or joint-use facilities, property and rights; provided, that in the  
114 assumption of the rights and obligations of the previous owner by  
115 such a municipality, such municipality shall in no way or form  
116 restrict, impede, or prohibit access that other parties would enjoy  
117 under the previous ownership.

118 (g) Any municipal lighting plant established pursuant to these  
119 provisions shall collect the energy conservation and renewables  
120 charges as established by the department under section nineteen  
121 and section twenty of chapter twenty-five of the General Laws,  
122 and may use the resulting revenues for cost-effective demand-side  
123 management programs and to support the development and pro-  
124 motion of renewable energy projects in accordance with the provi-  
125 sions of section four E of chapter forty J, and may elect to  
126 contribute to, and benefit from, programs operated by one or more  
127 distribution companies or the Massachusetts Renewable Energy  
128 Trust Fund, on the same basis as the distribution companies.

129 (h) Any municipal lighting plant established pursuant to these  
130 provisions shall allow customers to be served by competitive elec-  
131 tricity suppliers, and shall establish rules to allow competitive  
132 supply while protecting the financial stability of the municipal  
133 lighting plant.

134 (i) The department shall not allow as a cost of service any costs  
135 of the incumbent distribution company in connection with such  
136 proceedings, in excess of the costs reasonably necessary to pro-  
137 vide information, negotiate necessary contractual arrangements,  
138 and represent the interests of the remaining ratepayers in  
139 designing the severance plan as described in paragraph (d) of this  
140 Section.

141 (j) The department shall report to the Joint Committee on Gov-  
142 ernment Regulations annually on the operation of this revised  
143 section, including a summary of activity under this section and  
144 any recommendations for amending the section.

1 SECTION 2. Section 1B of chapter one hundred sixty-four of  
2 the General Laws, as appearing in the 1998 Official Edition, is  
3 hereby amended by adding to the end of paragraph (a) the  
4 following:—

5 except that the purchase by a municipality of plant from a dis-  
6 tribution company shall transfer all rights and obligations estab-  
7 lished in this section to the municipal lighting plant of the  
8 purchasing municipality.

1 SECTION 3. Chapter one hundred sixty-four of the General  
2 Laws, as appearing in the 1998 Official Edition, is hereby

3 amended by inserting after section 34B the following new  
4 section:—

5     Section 34C: Each electric distribution company shall maintain  
6 accounts of plant in service in each municipality in its service ter-  
7 ritory, including the original cost of plant, accumulated deprecia-  
8 tion, and any other measures of the value of plant that the  
9 department may order used for determination of sale prices under  
10 section forty-three of this chapter. The distribution company shall  
11 maintain such accounts by the system of accounts approved by the  
12 department. Upon the request of any clerk of any municipality in  
13 its service territory, the distribution company shall provide such  
14 accounts for that municipality within thirty days. In the event that  
15 the distribution company fails to comply with this provision, it  
16 shall be liable to the municipality for one thousand dollars for  
17 every day of noncompliance.